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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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|-----------------|-------------|----------------------|---------------------|------------------|

09/816,012

03/22/2001

Stefan Besling

US018029

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7590

07/01/2005

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1109 MCKAY DRIVE MAIL STOP SJ41

SAN JOSE, CA 95131

EXAMINER

HESS, DANIEL A

ART UNIT

PAPER NUMBER

2876

DATE MAILED: 07/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

EP

| | | | | |
|------------------------------|------------------------|--|---------------------|--|
| Office Action Summary | Application No. | | Applicant(s) | |
| | 09/816,012 | | BESLING ET AL. | |
| | Examiner | | Art Unit | |
| | Daniel A. Hess | | 2876 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 April 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 31-50 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 31-50 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This action is in response to an 8/24/2004 amendment, which has been placed in the file of record.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 31-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over the technical specification for the Washington Metro Area Transit Authority (WMATA) SmartTrip system, dated 5/30/1997 (hereinafter WMATA) in view of Stutz, "Your Vacation Plans for Sale?" Wired News, posted online July 9, 1998.

Re claims 31: WMATA's SmartTrip system teaches a system for collecting a fare and granting access to a transportation system via a use of a transportation pass, the transportation pass being configured to communicate electronic information to an authorization device to collect the fare and grant access based on collecting the fare.

Further, as shown in page 11, of the specification the system accumulates information related to each access of a plurality of accesses to the transportation system.

WMATA fails to teach or suggest bundling the data for sale and selling the data.

Stutz discusses a plan (entire document; notably page 1, 2nd paragraph) in which passenger data is collected for sale to direct marketers. As described, this data includes travel

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itineraries and passenger information, which is just the sort of thing that a frequent flier tracking system could collect. Although not explicitly stated, sale of this data would naturally subsidize the transportation system, revenue comes from a source other than ticket sales.

In view of Stutz, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include the old and well-known sales of travel data gathered because this can increase revenue for airlines, and benefit direct marketers who would sell to travelers.

Re claims 32-34, 36-38, 40: These data can be found among the data collected by WMATA (see technical specification).

Re claim 35: It has been known for years to mine data to achieve useful demographic profiling for marketing purposes. This has been done with the various data collected each decade by the US Census. The motive has been greater marketing success.

Re claim 39, 41: It is clear in Stutz (page 1, 2nd paragraph) that the direct marketers buying the data would do business in areas traveled by the fliers; otherwise what purpose would data on 'travel itineraries' serve?

Re claim 42: See claim 31. Regarding managing the transportation system, WMATA tracks traffic for the sake of managing its system, as evidenced by press releases it makes regarding load (i.e. new records set), and by the fact that it provides extra trains at times of high load.

Re claim 43-49: These data can be gathered from the data collected by WMATA (see technical specification).

Re claim 50: It is known frequent fliers programs have certain days they are not allowed to use their miles. This is a determination of the impact that the travelers would have of traffic

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flow, and then using the program to modify traveler's behavior, i.e. modify transportation services based on traffic flow.

Response to Amendment

The applicant has argued that since a frequent flier card previously employed does not involving electronic communication in gaining access, the Instant Application should be allowed.

The examiner has found new art, namely DC Metro's SmarTrip system, that collects rider travel information and is also used as an access pass.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. An article by epic.org discusses data collection by the DC Metro system.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

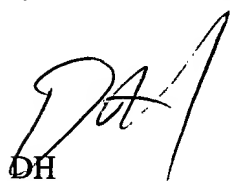
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however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel A Hess whose telephone number is (571) 272-2392. The examiner can normally be reached on 8:00 AM - 5:00 PM M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G Lee can be reached on (571) 272-2398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



DH
6/14/05



DANIEL STCYR
PRIMARY EXAMINER